

## Court Upholds Class Action Waiver in MCA Lawsuit

June 1, 2016 | [Catherine M. Brennan](#)

The U.S. District Court for the Eastern District of Pennsylvania recently denied a motion to certify a class of Korean and other Asian businesses that alleged that the merchant cash advance transactions into which they entered with Got Capital LLC violated the Racketeer Influenced and Corrupt Organizations Act. The plaintiff merchants, who originally filed a [complaint](#) asserting violations of virtually every consumer credit law, argued that Got Capital specifically targeted them because of their status as Korean-American and Asian-American businesses in Pennsylvania, New York, New Jersey, Texas, California and the United Kingdom. Got Capital opposed the motion for class certification by pointing out that the merchant cash advance agreement contained the following class action waiver clause:

*The Parties acknowledge and agree that the amount at issue in this transaction and any disputes that arise between them are large enough to justify dispute resolution on an individual basis. EACH PARTY HERETO WAIVES ANY RIGHT TO ASSERT ANY CLAIMS AGAINST ANY OTHER PARTY AS A REPRESENTATIVE OR MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION.*

The federal trial court rejected the merchants' claim that the waiver was unconscionable under Pennsylvania (and also New York) law. Under Pennsylvania law, a contract is considered procedurally unconscionable if it is a contract of adhesion; that is, that it is a standard form contract prepared by one party, to be signed by the party in a weaker position, usually a consumer, who adheres to the contract with little choice about the terms. Unequal bargaining power, standing alone, does not make a contract unconscionable. Rather, the court looked to a variety of factors, including whether the contract contained terms unreasonably or grossly favorable to one side and to which the disfavored party does not assent. Here, the merchants further claimed that their lack of English proficiency contributed to a conclusion that the contracts themselves were unconscionable. The court declined the invitation to find the agreements unconscionable because the agreements were for a business-purpose transaction and that the representative plaintiffs could, in fact, communicate in English and did, in fact, manage their own small businesses. The plaintiffs responded to advertisements for funding, reviewed the terms, and accepted them after having an opportunity to review the agreements. The court thus enforced the class action waiver in the underlying agreements, but allowed the lawsuit to proceed based on individual claims.

[Korea Week v. Got Capital LLC](#)

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